Rawls and the Question of Physician-Assisted Suicide

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by Elvio Baccarini

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ELVIO BACCARINI
University of Rijeka

Rawls’s theory of justice is capable of providing an important contribution to the question of physician-assisted suicide (PAS). PAS should be guaranteed as a right to make decisions in accordance with the conception of the good the individual formulates as a rational being. This defense is supported, therefore, by a Kantian premise. But it is also possible to oppose this kind of proposal by relying on different aspects of Kant’s theory, i.e. on some variant of the famous argument against suicide based on the means/end formulation of the categorical imperative. In this paper, I try to show that these attempts are not well founded, and that the Rawlsian appeal to the Kantian tradition divulges better perspectives. I also try to add considerations inspired by contextualist epistemology to the Rawlsian appeal to the burdens of judgment.

Partial inspiration for this paper came from a discussion at a conference on moral philosophy. A question was asked to a participant, who was explaining the two Rawlsian principles: “Can the Rawlsian theory of justice provide answers to more specific questions concerning the attribution of rights?” In fact, John Rawls does not give many precise indications about the implications of his theory for specific issues concerning the attribution of rights. His attitude towards the problem of abortion, for example, serves as confirmation of his reluctance. Some philosophers\(^1\) take Rawls’s following statement, found in *Political Liberalism*, to represent an argument defending abortion:

> As an illustration, consider the troubled question of abortion. … Suppose … that we consider the question in terms of these three political values: the due respect for human life, the ordered reproduction of political society over time, including the family in some form, and finally the question of women as equal citizens. … Now I believe any reasonable balance of these three values will give a woman a duly qualified right to decide whether or not to end her pregnancy during the first trimester. The reason for this is that

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\(^1\) For example, see: M. Matuloviæ, “Nudi li Rawlsov politièki liberalizam moguænost kon- sensusa”, in H-G. Flick (ed.), *Liberalizam i katolicizam u Hrvatskoj, II dio* (Zagreb: Friedrich-Naumann-Stiftung, 1999), 425-429.
at this early stage of pregnancy the political value of the equality of women is overriding, and this right is required its substance and force.\(^2\)

In “The Idea of Public Reason Revisited” Rawls explains that the above statement is only an exemplification of the model of argumentation in his political theory, and not a definitive argument in favor of abortion.\(^3\) In this article, I will show some implications of Rawls’s theory for the attribution of rights in specific cases. I will consider how Rawls’s theory of justice may account for the problem of physician-assisted suicide (PAS). My aim is to show that the Rawlsian proposal offers sufficient reason to arrive at a convincing answer on this issue. More precisely, I think Rawls’s theory of justice, with its principles of justice and methodology, can guide us in solving the problem of PAS.

As far as I know, Rawls makes only three explicit statements on the problem. The first and most important appears in “The Philosopher’s Brief”, written together with Ronald Dworkin, Thomas Nagel, Robert Nozick, Thomas Scanlon and Judith Thomson.\(^4\) A second, shorter remark appears in the context of a comment on Kant’s proposal in his Lectures on the History of Moral Philosophy (where the topic is not PAS, but suicide).\(^5\) A third statement comes from an interview (relating to “The Philosopher’s Brief”).\(^6\) Despite the rarity of Rawls’s comments on the issue, it is important to consider how he treats PAS in order to test the power of his theory. In particular, it seems to me that it might be an enterprise of some interest to compare Rawls’s position and its implications with those of other Kantian philosophers. For it seems to me that the Kantian model is better (in the sense of leading to the best explication of the doctrine) if one follows, not those who try to justify prohibiting PAS, but Rawls’s liberal attitude on the practice.

At this point, a further qualification is needed. I treat suicide and PAS as the same issue, and when it is not necessary to specify the difference, I employ the two terms interchangeably. The reason for this is that the two, in the context of the moral problems I raise, are equivalent. In both cases the crucial moral question is whether an individual can decide about ending her life. There may be, of course, further complications that distinguish the two cases. Suicide has in principle nothing to do with medicine, and may include people in conditions very different from patients requiring PAS. In the case of PAS a physician performs acts that allow the patient to accomplish suicide which, according to some authors, is impermissible and incongruent with the rationale of the medical profes-


I will refrain from discussing this view. For as I said, the only crucial question I address is whether a rational individual has the right to decide about her death. Both PAS and suicide are cases of exercising a decision about death by a person who is rationally capable of deciding. My intention is not to say that suicide and PAS are completely morally equivalent questions. For me, in this paper, it is important only that they are equivalent according to the criterion I indicated. This is why I discuss both topics in the same way, without further qualifications, although the authors I mention focus specifically only on one of them (Kant, for example, refers to suicide, while Rawls concentrates on the problem of physician-assisted suicide). A final qualification. Namely, I also touch on the problem of euthanasia and, when I do not give any specification, I mean voluntary euthanasia, i.e. an instance of euthanasia explicitly covered by the consensus of the subject. Non-voluntary euthanasia involves cases wherein the subject is incapable of expressing her opinion. Here, the decision is made by other people concerned with the subject’s best interests.

1. As an instance of the attitude of forbidding PAS among contemporary Kantians, I will examine J. David Velleman’s “A Right to Self-Termination?” which is, among others things, a reply to “The Philosopher’s Brief”. The basis of the discussion to which Velleman refers is related to the means/end formulation of Kant’s categorical imperative, as well as the Kantian argument against suicide. Kant articulates his own argument in the following way:

   If [a human being] destroys himself in order to escape from painful circumstances, he uses a person merely as a means to maintain a tolerable condition up to the end of life. But a man is not a thing, that is to say, something which can be used merely as means but must in all his actions be always considered as an end in himself. I cannot, therefore, dispose in any way of a man in my own person so as to mutilate him, to damage or kill him.

Philosophers have discussed this statement in order to interpret Kant’s thought. According to some of them, Kant’s statement is a rejection of suicide in general. According to others, Kant writes against only some motivations for suicide, such as that of avoiding pain and suffering. Rawls himself interprets Kant in this way. Commenting on Kant’s remarks on the casuistic view of suicide, found in the *Metaphysics of Moars*, which, according to Kant, gives rise to some moral dilemmas, Rawls says:

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I don’t read this passage as saying that suicide is always wrong. Rather, it says that a moral title for it is always needed, which cannot be given by the ends wanted by natural inclination. The casuistical questions Kant lists in this section imply that such a title can be given by conflicting grounds of obligation; for these may be at times stronger than the ground not to take our life. Otherwise, the questions listed are not questions! Kant asks, for example, whether it is wrong of a commanding general to carry poison so that if captured he can avoid being ransomed on conditions prejudicial to his country (a reference to Frederick the Great). While Kant’s doctrine excludes suicide for reasons based solely on our natural inclinations, it is not always forbidden whatever the reasons. What is required are very strong reasons based on obligatory ends, which may conflict in particular circumstances.\(^\text{12}\)

Velleman obviously interprets Kant as referring to only some specific cases of suicide. He states:

> The Kantian objection to suicide, then, is not that it destroys something of value. The objection is not even to suicide per se, but to suicide committed for a particular kind of reason—that is, in order to obtain benefits or escape harms.\(^\text{13}\)

Since I do not intend to discuss Kant directly, I will not insist on the above interpretation of Kant’s argument. I cite it only as an introduction to Velleman’s proposal in direct relation to Kant. In keeping with this interpretation, and bearing in mind the intended relation of his own argument to Kant’s, Velleman’s proposed refusal of PAS is limited to cases in which it is justified on the grounds that death is in the individual’s best interests, i.e. as a means of avoiding pain or other undesirable situations. He explains the ground for prohibition thus: “The objection to destroying a person solely for the sake of his interests is that it treats the person as commensurable in value with those interests.”\(^\text{14}\) Velleman calls this objection the Exchange Argument, claiming that it “is a version of the more general Kantian argument against treating a person merely as a means.”\(^\text{15}\)

It would be useful to clarify the exact target of Velleman’s discussion by stating an argument in favor of PAS, and then show which part of the argument Velleman deems objectionable. Hence we need to set out the standard structure of such an argument that appeals to the right of the individual to end her life in order to end pain or other conditions that she believes are not acceptable for her.

1. **Individuals have the right to interrupt their life in order to make it better.**
2. **Individuals have the right to determine what is good.**
3. **In situation S an individual thinks that the conditions of life are such as to impose a condition in which evils are dominant over goods, and it is possible to avoid this only by terminating life.**

**Conclusion:** *In situation S the individual has the right to terminate her life.*

Velleman accepts the second premise, but rejects the first. This rejection represents his ground for forbidding PAS. His reason for rejecting (1) is that the


\(^{13}\) J. David Velleman, “A Right to Self-Termination?”, 616.

\(^{14}\) Ibid., 622.

\(^{15}\) Ibid., 623.
value of the person is qualitatively superior to her interests, and therefore no individual has the right to dispose of her person to realize her interests. The person is valuable in herself, while all her interests and the goods related to her are only dependently valuable, i.e. their value depends on her value. Arguing for this claim, Velleman notes that “things that were good for you would not actually merit concern unless you merited concern; and if you didn’t, then despite their being good for you, they wouldn’t ultimately be worth wanting, after all.”16 The reason why we think that goods for human beings are valuable is because human beings are valuable, i.e. each human being has a value that makes her deserving of moral attention. This implies that committing suicide to avoid pain is contrary to rationality, because by virtue of this act an individual exchanges her person for the satisfaction of her interests (i.e. an absolute good for a dependent good), and this is unacceptable. Velleman concludes that “Kant was right to say that trading one’s person in exchanging for benefits, or relief from harms, denigrates the value of personhood, respect for which is a criterion of morality. … That’s why … I think that suicide is immoral when committed on the grounds that life isn’t worth living.”17

Velleman’s argument has two relevant statements. First, the human person is the original bearer of value (Velleman here follows Kant) and an end in itself (as Kant says in the famous formulation of the categorical imperative). Secondly, a person acts contradictorily in committing suicide for the sake of her interests because she places herself at the same level of dependent values that can be exchanged, thereby treating herself as a means. On this point, Velleman asserts: “The self-interested choice of suicide cannot be an exercise of rationality, because it entails oneself as an instrument of one’s interest, which is incoherent.”18 I will not question the first statement of the argument, i.e. that human beings as such are bearers of value. In my view (in accordance with the Rawlsian standpoint that underpins my discussion), the human person is the original bearer of value, but also a value-conferring source, a source of value. But I will proceed to question the argument’s second statement. My contention is that there is no kind of contradiction (in particular, no contradiction with the argument’s first statement) in the practice of suicide, not even in the instance cited by Velleman.19

It is important to indicate, at this stage, at what level of moral problems this discussion should be understood. It may be possible that Kantians such as Velleman think suicide is irrational and condemnable from the point of view of

16 Ibid., 611.
17 Ibid., 614.
18 Ibid., 624.
19 Digressing for a moment, it is interesting to note that Kant’s and Velleman’s arguments do not say anything that would deny the possibility of non-voluntary euthanasia, i.e. euthanasia that applies in cases wherein individuals are incapable of making rational decisions. In accordance with this interpretation of Kant’s attitude towards suicide, Rawls suggests a reading the formulation of the categorical imperative in this way: “We are always to act so as to treat the powers that constitute our humanity, both in our own person and in the persons of others, never solely as a means, but at the same time as an end.” See J. Rawls, Lectures on the History of Moral Philosophy, 189-190.
non-public morality (i.e. morality not included in the domain of public institutions). However, Kantian arguments are usually used to justify the legal practice of not permitting PAS. Although Velleman is not totally resolute on the matter,20 his argument represents at least a prima facie reason for prohibiting PAS. The main reasons are that the argument appeals to a contradiction in the rival position, and therefore to the universal human rational faculty21 (and so it may be justifiable in the public domain), and that PAS implies a denigration not only of the subject’s personality, but also everybody’s personality.22 In addition, Velleman thinks his statement succeeds in showing that there is no general right to choose between life and death, and thus denies a reason having substantial relevance for public institutions.23 It is possible, then, that Velleman’s Kantian arguments are used at the level of public discussions and public institutions. I will try to show that there are valid reasons to reject, on Rawlsian grounds, these arguments at that level.

I begin with the declaration in favor of PAS that Rawls and others make in “The Philosopher’s Brief”. Here I cite a passage of central importance for explaining the text’s attitude towards euthanasia:

Certain decisions are momentous in their impact on the character of a person’s life—decisions about religious faith, political and moral allegiance, marriage, procreation, and death, for example. Such deeply personal decisions pose controversial questions about how and why human life has value. In a free society, individuals must be allowed to make those decisions for themselves, out of their own faith, conscience, and convictions. … A person’s interest in following his own convictions at the end of life is so central a part of the more general right to make “intimate and personal choices” for himself that a failure to protect that particular interest would undermine the general right altogether. Death is, for each of us, among the most significant events of life.24

This part of the argument in “The Philosopher’s Brief” is related to one of the prominent aspects of Rawlsian theory.25 Namely, a feature of well-ordered political societies is that they assume equal respect for citizens holding different moral outlooks in a pluralistic society as the fundamental political rule. Political institutions are inspired by this general principle. They are consequently concerned with guaranteeing equal respect to all. Political institutions in a well-ordered society are not inspired by comprehensive doctrines that give answers to every morally relevant question. For the possibility to make choices on fun-

20 “The complexities of the issue have thus far defeated my attempts to arrive at a settled position. On the policy question posed by this symposium, then, I am neither Pro nor Con. I’m, like, Not So Fast.” See J. David Velleman, “A Right to Self-Termination?”, 607.
21 See note 18.
23 Ibid., 619.
25 Of course, each of the authors of “The Philosopher’s Brief”, as they indicate at the beginning of the text, arrived at their arguments by relying on different grounds.
damental and extremely important moral matters is the prerogative of individual citizens.

The following passage explains one of the grounds for holding the right of each individual to make decisions about death for herself, and this explanation reveals a conflict with the attitude of Kantians like Velleman:

Different people, of different religious and ethical beliefs, embrace very different convictions about which way of dying confirms and which contradicts the value of their lives. … None of these dramatically different attitudes about the meaning of death can be dismissed as irrational.26

Surely, this statement reflects a fundamental aspect of the Rawlsian proposal which, evoking Kantian grounds, affirms that each individual has two relevant moral capacities, rationality and reasonableness. The latter is a concept pertaining to the sense of justice. But the former is more important here, i.e. the capacity to create a conception of the good in the life of an individual. Accordingly, Rawls states:

The rational … applies to a single, unified agent (either an individual or corporate person) with the powers of judgment and deliberation and seeking ends and interests peculiarly its own. The rational applies to how these ends and interests are adopted and affirmed, as well as to how they are given priority. It also applies to the choice of means.27

The conception of the good that results from this capacity is peculiar to each individual and it is very probable, given the fact of pluralism, that it will not correspond equally to every individual. In a free and pluralist society, individuals freely exercising their rational capacity will arrive at different conclusions, some of which are well supported. Rawls maintains that pluralism is not contrary to reason and rationality in moral matters on account of its source in the peculiar epistemological situation found in this area. He says that “as rational we have to balance our various ends and estimate their appropriate place in our way of life; and doing this confronts us with grave difficulties in making correct judgments of rationality.”28 Rawls lists the burdens of judgment that explain these grave difficulties in detail: the evidence bearing on the relevant cases is conflicting and complex; there is frequent disagreement about the weight of the kinds of considerations that are relevant; frequently we make use of vague concepts that are subject to hard cases; there is the problem of assessing evidence and weighing moral and political values shaped by our total experience.29

The basic reason of disagreement between Rawls and Velleman on the topic of PAS is already palpable in the previous quotations taken from Rawls. According to Rawls, it is not possible to conclusively determine whether choices regarding the fundamental aspects of the value of life are not rational when made by a subject who exercises her rationality; this concerns also the choice of

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27 J. Rawls, Political Liberalism, 50.
28 Ibid., 56.
29 Cf. ibid., 56-57.
the way one dies. Velleman, on the other hand, argues that the unacceptability of PAS is an evident fact of rationality. Let us consider these claims in more detail.

Velleman contends that there is a visible contradiction in justifying the choice of PAS, and he believes that he has shown this. The logical contradiction involved in justifying suicide must be seen by every rational person that exercises rationality, the same as \( p \& \neg p \), or, perhaps better yet, the same as any valid *reductio ad absurdum*, must be seen to involve a logical contradiction. In response to Rawls, Velleman could say that the burdens of judgment Rawls stipulates in order to explain why people who use their moral powers disagree on choices of value do not apply in the specific case of PAS. No burdens of judgment are applicable to justify an individual’s erroneous judgment. There is no evidence bearing on the case that is conflicting and complex; there is no disagreement about the weight of the kinds of considerations that are relevant; there are no vague concepts that are subject to hard cases; there is no problem of assessing evidence and weighing moral and political values shaped by our total experience. The rhetorical question Velleman might ask is: If an individual is incapable of being aware of a contradiction, even after it has been explicitly indicated to her, what remains of her rationality?

The supposed fact of the irrationality of choosing suicide, if true, would represent a powerful ground for denying the permissibility of PAS, even if the Rawlsian model of political society were accepted, i.e. a political society based on the principles of democracy and tolerance upholding respect for every individual as the rational founder of her conception of the good. An individual that persists in obtrusely irrational behavior—Velleman might say—does not deserve the protection of her choices because she has foregone her humanity or rationality. He states, for instance: “That’s why this choice is not morally protected. One’s value as a rational being cannot require that others defer to one’s irrational disregard for that same value.” Therefore, PAS could be forbidden without contradicting the Rawlsian ideal of a just society.

2. As already anticipated, I will try to propose a way of rejecting Velleman’s conclusion on Rawlsian grounds. Before stating my critical position, I will very briefly indicate again the contradiction to which Velleman appeals.

On the one hand, the individual that commits suicide in order to avoid pain treats herself as an end, as someone that has value in and of herself. On the other hand, however, she approaches herself as something that is exchangeable so as

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30 I will refrain from discussing Kant’s exegesis of the notion of contradiction that is relevant here. This might, of course, result in mistakes in my argumentation. However, my aim is to discuss Velleman’s position, and not Kant’s. Velleman himself does not offer any particular explication of the notion of contradiction he uses in his paper. So even though he makes references to Kant, I will assume that Velleman employs the common notion of contradiction to mean logical contradiction. I take this to be the most natural way of interpreting any author that does not explicitly and clearly indicate a different possible interpretation.


32 In the discussion that follows, I will refer to the more familiar Kantian means/end terminology. Obviously, the same line of argument holds for Velleman’s version of condemning suicide.
to obtain something else (in this case the avoidance of pain)—this is equivalent to treating somebody as a means.

Against this argument I offer a twofold reply. First, I will show that there is no contradiction in choosing suicide, provided that this is made in accordance with the person’s conception of the good. A relevant aspect of the conception of the good of a person may be that some pains ought to be avoided in a good life, and therefore it might be possible that she does not make any contradiction if she requests PAS to avoid pain. My second strategy is to add some further considerations that justify rejecting the denial of rationality to a person, even if she does not recognize the validity of an argument containing a contradiction or, more generally, that is based on deduction. This should supplement the Rawlsian considerations concerning the burdens of judgment.

By denying the contradiction on which the Kantian argument relies, it is crucial to demonstrate that it is not true that a person—we’ll call her Kim—makes of herself a means, and not an end, through PAS. What speaks against the Kantian argument is that if it were possible to state this in relation to Kim’s request, it would be possible to say the same thing with respect to almost all possible activities. Even if one is acting for the sake of the highest of all possible goals (such as sacrificing herself for the good of the rest of humanity, or writing a poem of the highest aesthetic value), one is making a means of herself for the realization of a goal. The same could be said if one behaves out of duty. In all these cases the individual is an instrument by means of which some goals are realized. Obviously, the condemnation of these behaviors is absurd. Because in all these actions it is true that people make means of themselves. But it is equally true that they also deem themselves ends, so they are not only means. This is precisely what the means/end formulation requires.33 To be in a position to condemn suicide, Velleman would have to demonstrate that Kim, by requesting PAS, behaves in such a way as to treat herself as a means only. In fact, this is what he asserts. But is he right? It is crucial for him to indicate the difference between the request for suicide and, for example, making a sacrifice for the good of the rest of humanity.

One possibility may be to say that when an individual makes something representative of the highest values, she affirms her own value as a rational being. This would not be true, however, when she acts with a view to satisfying her physical instincts, such as freeing herself of pain. I think it preferable to see the possibilities open to an individual for affirming her value as a rational being from a different angle. This individual, in accordance with her conception of the good, thinks about the whole of her life, in which every act is a step towards the realization of a good life. It seems natural (as “The Philosopher’s Brief” indicates) to add that death—as the unavoidable final moment in everyone’s life—is part of life. It follows that the choice about the manner of death represents a

33 To remind ourselves of the formula: “So act as to treat humanity whether in thine own person or in that of any other, in every case as and end withal, never as means only”. See I. Kant, *Fundamental Principles of the Metaphysics of Morals*. 
way of affirming the individual as rational. By choosing the manner of dying, the individual affirms herself as a being that is capable of establishing what is valuable and how a good life unfolds until the last moment. If living in a particular condition is contrary to this individual’s conception of the good life, the individual affirms herself by terminating her life, instead of allowing it to continue. This individual, therefore, affirms herself, and does not trade herself, by opting for death.

The only way to deny this conclusion is to say that there are some objectively higher values to which an individual must conform, and which are the only worthwhile values deserving of extreme sacrifice. This would deny the Rawlsian ideal of human persons as rational beings, as sources of their specific conceptions of the good. This view is possible, but the consequence thereof, as Rawls himself may say, is to deny the tolerant democratic tradition as such. Since I cannot envisage that a Kantian like Velleman would be prepared to do this, I will not address this issue because it is not relevant to the main topic of this paper.

At this point, however, Velleman may well still argue that “to permit oneself the choice of suicide for the sake of one’s autonomy is to treat a single exercise of that autonomy as worth the sacrifice of one’s autonomous self. It’s to treat oneself like a stick of dynamite, which realizes its nature by blowing up. That’s fine for dynamite, which is a means for producing explosions, but an autonomous agent is not a means of producing choices, any more than he is a means of promoting interests.” This argument may be applicable only in an imaginary case, i.e. only if humans were possibly immortal. But mortality is a part of our fate, and we must think about death as the unavoidable final moment of life. This explains why the decision to terminate a life could affirm a rational person’s value, and need not, as Velleman thinks, involve a paradox. The choice is not whether to fight death in order to protect a person, or to make use of a person for a different end, but whether to submit ourselves to mere fate, or to exercise rationality in choosing a death that conforms with our conception of the good.

Instead of Velleman’s metaphor of the stick of dynamite, I think the metaphor of a theater performance illustrates the situation better. Just like a performance, life must come to an end. Nobody would think a good writer leaves the end of the performance to chance. The last scene ought to be consistent with the rest of the performance and is, moreover, especially important because it represents the final occasion in which the writer conveys a message or realizes something valuable. The same can be said about the death of a person.

3. In addition to the Rawlsian appeal to the burdens of judgment, I will try to show that PAS could be justifiable and need not deny the individual’s status as a rational being, even if it leads to a contradiction, as Velleman’s Kantian argument shows. With this attempt in mind, I will make use of some considerations

34 J. David Velleman, “A Right to Self-Termination?”, 625.
on epistemology. I hope this will not be unwelcomed by the pure Rawlsian, because it does not presuppose much more epistemology than what is present in Rawls’s discussion of the burdens of judgment.

I will offer an argument that is critical of the Kantian tradition as instantiated by Velleman and his appeal to rationality. In my opinion, we conceivably grant an individual due respect when she requests PAS, even if such a request or its justification presents a contradiction. It is enough that the contradiction is not evident to her, even if she uses her rational capacity as best as she can. My strategy is to show that if we require a person to perform a completely valid process of reasoning in order to recognize her as deserving of respect as a rational person, this requirement is too strong. Indeed, it is even too stringent for the greatest intellects of the history of humankind. One need only recall that seeing the kind of contradiction (if there is any) to which Kant refers was not realized by one of the leading logicians of the 19th century, John Stuart Mill, who claimed that the behaviors condemned by Kant as contradictory are in fact—like lying—only unacceptable, and not contradictory.36

I think it possible to find problems in Velleman’s implicitly assumed concept of rationality by appealing to the distinction between invariantist and contextualist concepts of rationality. According to the invariantist view, one is rational if and only if one follows universally valid norms of rationality. For example, if the inference I is valid, then an individual is rational if she concludes according to I, and the individual who concludes otherwise is not rational. This is the concept of rationality Velleman accepts. Contextualism, on the other hand, is the epistemological position which says “that the truth-conditions in knowledge ascribing and knowledge denying sentences (sentences of the form ‘S knows that P’ and ‘S doesn’t know that P’ and related variants of such sentences) vary in certain ways according to the context in which they are uttered. What so varies is the epistemic standards that S must meet.”37

Reference here is made to knowledge of the external world, and not logical inference. Moreover, contextualism seeks to determine when an individual is epistemologically justified, and not when she is rational. It may well be possible that an individual is rational when she believes that it rained yesterday (because she infers correctly on the basis of the beliefs she has), while at the same time being unjustified in holding these beliefs because she is, say, epistemically irresponsible with respect to the ground of the trustworthiness of her beliefs. As I intimated, the typical case for contextualism is the debate about justification,

36 “[Kant] does ... lay down a universal first principle as the origin of moral obligation; it is this ‘So act, that the rule on which thou actest would admit of being adopted as a law by all rational beings.’ But when he begins to deduce from this precept any of the actual duties of morality, he fails, almost grotesquely, to show that there would be any contradiction, any logical (not to say physical) impossibility, in the adoption by all rational beings of the most outrageously immoral rules of conduct.” See J.S. Mill, “Utilitarianism”, in J.S. Mill and J. Bentham, Utilitarianism and Other Essays (Harmondsworth: Penguin, 1987), 275.

and not the problem of rationality. However, I think this approach, if taken exclusively, is not justified, for the relation of the individual to inferential rules must be seen in terms of a set of beliefs which may or may not be justified and true. Knowledge of inferential rules is, in my opinion, only one of the possible ways of knowing. Just as a person has or does not have knowledge of a chair in front of her, dependent on her cognitive abilities and the matter of fact, so too one has or does not have knowledge of the inference I dependent on one’s cognitive abilities and the matter of fact (whatever the matter of fact may be in this case). It is not necessary for me to appeal to any particular position regarding the metaphysical status of beliefs about inferential rules to justify this statement. It suffices to say that beliefs about logical rules and correct inferences are fallible like other beliefs. There is enough evidence to accept the statement that even the apparently best founded inferences could be wrong. Indicative of this is the historical case of the inference “the whole is bigger than a part”. John Locke surely cannot be considered a naive thinker, even though he considered this the most certain of all possible beliefs. But sufficient mathematical knowledge shows that this statement is not true. Take, for instance, the set of all numbers. Then take the set of all odd numbers. The second set is a part of the first, but both sets are infinite, therefore one set cannot be smaller than the other. This counterexample shows that even an apparently simple logical truth, thought to be the most certain by one of the greatest philosophers in history, can be wrong. Notwithstanding, it does not make sense to suggest that Locke was not rational because of this mistake. Rather, bearing in mind the possibility of making inferences in the Lockean situation, he offered an inference that was justified in the given context, even though it is not justified outside that context. Examples like this highlight that it is possible to affirm the contextualist approach even for inferences.

In this section of my paper, I have used two central concepts: justification and rationality. An individual is justified when her beliefs have an epistemic value (I will not analyze here the details of this epistemic value) that renders them, if they are true, as having the status of knowledge. Among these beliefs there are beliefs about the correctness of inferences. An individual is rational when she develops a deduction in accordance with her beliefs about the inferences she is justified in accepting. Just like other beliefs, it is not necessary for them to be true. If we demand that an individual’s inferences be objectively

38 “Moral principles require reasoning and discourse, and some exercise of the mind, to discover the certainty of their truth … But this is no derogation to their truth and certainty; no more than it is to the truth or certainty of the three angles of a triangle being equal to two right ones: because it is not so evident as ‘the whole is bigger than a part’.” See J. Locke, An Essay Concerning Human Understanding, Book I, Chapter II, Section 1, 1689, www.orst.edu/instruct/phl302/texts/locke1/Book1b.html

valid so as to attribute rationality to her, we would not be able to attribute this qualification to even the greatest minds of history.

Still needed, though, are some details about when an individual is epistemically justified. About this I will offer some comments, and thereby indicate what I am willing and not willing to accept of the contextualist proposal. I do not accept the idea that justification (and thus rationality) rigorously varies dependent on the external conditions of the knower. For example, I do not accept the idea that a mathematician may be justified in an everyday situation (a less demanding context) in uttering the statement that the whole is always bigger than the part, while not being justified when presenting a paper at a meeting of the Society of Mathematicians (a more demanding context). A mathematician knows that the said statement is not true, and she must always behave dependably on the whole set of beliefs she deems true. However, I accept the idea that different persons, though they develop different inferences, can be justified. Locke was justified and rational when he concluded that the whole is always bigger than the part, although a mathematician contemporaneous with him is justified in concluding that this is not true. Some individuals, for whatever reasons, are not in a position to develop sophisticated and valid inferences which others are. But this does not mean that they are irresponsible in their reasoning. They make use of their rational capacity, even though they do not develop it as do, say, the best logicians. Or there is no knowledge needed in their social circumstances to make a specific valid inference.

This view of justification, in my estimate, secures respect for the individual as a rational being. Respecting an individual implies necessarily permitting her to develop her reasoning in accordance with her possibilities. She affirms her dignity as a rational being by developing inferences in the context of the level of her sophistication in reasoning, of which she herself is a part. Stout is right when he asserts that even if the most brilliant philosopher offers the perfect proof for the supreme moral principle, one should remember “the importance of considering the limits on who might plausibly be expected to look upon such a justification as a reason for accepting its conclusion. … Whatever a justification’s intended audience may be, its actual audience cannot extend beyond the class of people who understand the vocabulary in which it is cast and who have mastered the patterns of reasoning required to follow it.” Together with the possibility that some inferences are wrong because a subject cannot reach a high level of cognitive sophistication or cannot obtain some needed piece of knowledge, it may be the case that some inferences made by different thinkers diverge in virtue of the fact that their validity is not simple to see. This corresponds, for example, to the deduction implied by the analysis of the concept of “agent” that Alan Gewirth, in his renowned argument, tries to infer.

Velleman, of course, is well aware that people are limited in their capacities when it comes to making inferences. Nevertheless, he could insist that a compromise must not be accepted with those who do not exercise the highest level of rationality possible for human beings. But to this I think there is a convincing reply. We already saw that even the greatest minds also make false inferences. This raises the question about whether invariantism gives a realistic and applicable criterion to judge rationality. Such a criterion, I believe, has realistically to take into consideration the possibilities of limited beings such as ourselves. As Mark Timmons states, when explaining his contextualist position, “we are finite creatures with limited cognitive resources and with all sorts of non-epistemic goals in life, and we would expect any genuinely useful set of epistemic norms to reflect such facts. … The fact that our epistemic norms do not normally require of us that we devote inordinate amounts of time to checking our claims and beliefs for possible error (but instead require only that we expend a ‘reasonable’ amount of time doing so) reflects the fact that we are not purely intellectual beings whose only concern is with having an interesting stock of true beliefs. Life is short and there are other things to do.”

It is evident that if even the greatest minds were not always successful in making valid inferences, it is implausible to expect ordinary people may satisfy the invariantist criterion. An ethics that relies on the invariantist model is, therefore, suitable for beings much more rational than human beings (and especially human beings in usual conditions), and not for human beings themselves. This approach, I think, is wrong and an ethics employing such a concept of rationality cannot be of great help. It is better to replace this proposal with an ethics that relies on the contextualist model of rationality, which offers realistic and accessible criteria for researchers of real life situations. If this is accepted, then the respect due the individual, in the sense of treating her as a rational being, will manifest itself in permitting the committing of suicide or euthanasia, if this accords with the system of values and the concept of the good she herself develops to the best of her capacities and possibilities.

The line of argument I developed to justify the contextualist model attempts to show that there is a good general reason to be dubious of the supposedly most certain arguments. That Velleman tries to present an argument that appeals to a contradiction (and therefore an argument that may want to avoid the burdens of judgment indicated by Rawls) is not enough to render it a valid public reason argument. There is the possibility of error even here. Hence that there is a plurality of opinions on this matter comes as no surprise, just as in cases of situations more properly included in Rawls’s list of burdens of judgment. In this regard, I have tried to suggest some reasons that support my criticism of Velleman’s argument.

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4. Of course, as Rawls himself would note, the above manner of argumentation is still not a sufficient reason for making a final judgment about the problem of PAS. It may still be possible to forbid this practice on the basis of a valid argument in the public domain, by appealing to public reason, namely reasons accessible to every member of the political society possessing the two moral powers. An argument that might possibly justify the decision to forbid PAS is “that the vulnerable population—the elderly, the poor, the abandoned—would be too large, at least at this time, for this right to be granted. This right is fine and well for people with the means to use the law as an instrument of freedom, but for other people it would actually be quite dangerous.” Rawls does not say that this is a good argument, only that it is a good candidate for being a valid public reason argument. I agree with Rawls. This implies that discussion on PAS must also satisfy relevant considerations different to those given in this paper. The aim of this paper was only to show that, so far as due respect for a person as a rational being goes, there is no reason in principle to deny her the right to PAS if this is her considered request. But for real policy in a real society, considerations about the consequences of accepting PAS are very important, and, before making a final decision, they have to be balanced against the consequences of not accepting this practice.

43 This is part of the question asked of Rawls in the Commonweal “Interview with John Rawls”, 619.

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